

FCC FILE SECTION

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 92-49

In the Matter of

Amendment of Section 73.202(b). RM-7924
Table of Allotments, RM-8009
FM Broadcast Stations.
(Greenfield, Halfway and Seligman,
Missouri, and Huntsville, Arkansas)¹

REPORT AND ORDER
(Proceeding Terminated)

Adopted: January 8, 1993; Released: February 1, 1993

By the Chief, Allocations Branch:

1. The Commission has before it for consideration the *Notice of Proposed Rule Making and Order to Show Cause*, 7 FCC Rcd 1947 (1992), issued in response to a petition filed by KJEM-FM, A Limited Partnership ("petitioner"), requesting substitution of Channel 227C1 for Channel 227C2 at Seligman, Missouri, and the modification of its license for Station KESE to specify operation on Channel 227C1. To accommodate the upgrade at Seligman, an *Order to Show Cause* was issued to KXBR, Inc. ("KXBR"), the licensee of Station KXBR, Greenfield, Missouri, to change its channel from 228A to Channel 299A, and to Demaree Media, Inc. ("Demaree"), the licensee of Station KFAY-FM, Huntsville, Arkansas, to change its channel from 225A to Channel 258A.² Petitioner filed comments reaffirming its interest in Channel 227C1 at Seligman.³ KYOO Broadcasting, Inc. ("KYOO Broadcasting"), filed a counterproposal.⁴ Petitioner, KYOO Broadcasting and Ozark Mountain Broadcasting, Inc. ("Ozark"), filed reply comments. Informal comments were filed by Julian P. Freret. After the close of the comment period, petitioner and KYOO Broadcasting filed a joint request for approval of a settlement agreement.⁵

2. As indicated in the *Notice*, Channel 227C1 can be allotted to Seligman provided Channel 299A is substituted for Channel 228A at Greenfield, Missouri, and Channel 258A is substituted for Channel 225A at Huntsville, Ar-

kansas. The proposed substitutions at Greenfield and Huntsville can be made at the current licensed sites for Stations KXBR and KFAY-FM.

KYOO Broadcasting, permittee of Station KYOO-FM, Halfway, Missouri, counterproposed the substitution of Channel 226C3 for Channel 226A and modification of the construction permit for Station KYOO-FM to specify operation on Channel 226C3. To accommodate the upgrade at Halfway, KYOO Broadcasting also requested the substitution of Channel 299A for Channel 228A at Greenfield, Missouri, and substitution of Channel 228A for Channel 225A at Ozark, Missouri. KYOO Broadcasting stated it would reimburse Station KXBR, Greenfield, and Station KZPF, Ozark, for their reasonable expenses incurred in changing channels.

4. On November 18, 1992, petitioner and KYOO Broadcasting filed a joint settlement agreement looking toward the resolution of this proceeding. Pursuant to that agreement, KYOO Broadcasting is withdrawing its counterproposal to substitute Channel 226C3 for Channel 226A at Halfway, Missouri. In accordance with Section 1.420(j) of the Commission's Rules, KYOO Broadcasting states that it will not receive compensation in excess of its legitimate and prudent expenses in exchange for the withdrawal and submits a statement of expenses incurred in filing the Halfway counterproposal. The withdrawal of KYOO Broadcasting's counterproposal removes the conflict between Seligman and Halfway. In view of the withdrawal of the Halfway counterproposal, no further analysis of the comments is necessary.

5. Based on the above information, we believe the public interest would be served by substitution of Channel 227C1 for Channel 227C2 at Seligman, Missouri. A staff engineering analysis has determined that Channel 227C1 can be allotted to Seligman, Missouri, at petitioner's specified site.⁶ To accommodate the upgrade at Seligman, we shall substitute Channel 299A for Channel 228A at Greenfield, Missouri, and modify the license for Station KXBR to specify operation on Channel 299A.⁷ We shall also substitute Channel 258A for Channel 225A at Huntsville, Arkansas, and modify the license for Station KFAY-FM accordingly.⁸ In accordance with Section 1.420(g) of the Commission's Rules, we have authorized a modification of the license for Station KESE, Seligman, Missouri.

6. KXBR, Inc., licensee of Station KXBR, Greenfield, Missouri, and Demaree Media, Inc., licensee of Station KFAY-FM, Huntsville, Arkansas, did not respond to the *Order to Show Cause* as to why their respective licenses should not be modified to specify operation on Channel 299A and Channel 258A. Accordingly, pursuant to Section 1.87 of the Commission's Rules, KXBR, Inc., and Demaree Media, Inc., are deemed to have consented to the proposed modification.

¹ The community of Halfway, Missouri, has been added to the caption. The *Notice* incorrectly listed Huntsville, Missouri, instead of Huntsville, Arkansas.

² An assignment of license for Station KFAY-FM, Huntsville, Arkansas, was granted on June 9, 1992, and consummated on July 23, 1992. Henden-McChristian Communications is the new licensee.

³ In response to the *Notice*, petitioner provided an affidavit verifying the statements in its petition for rule making.

⁴ Public Notice of the counterproposal was given on June 8,

1992, Report No. 1894 (RM-8009).

⁵ Because this agreement resolves conflicting issues in this case, we believe acceptance is in the public interest. See Commission Rule 1.415(d).

⁶ The coordinates for Channel 227C1 at Seligman are 36-28-03 and 94-10-25.

⁷ The coordinates for Channel 299A at Greenfield are 37-23-10 and 93-53-16.

⁸ The coordinates for Channel 258A at Huntsville are 36-05-35 and 93-36-16.

7. Commission policy requires reimbursement to affected stations for the reasonable costs associated with changing frequencies. *See Circleville and Columbus, Ohio*, 8 FCC 2d 159 (1967). Petitioner has stated its intention to reimburse KXBR, Inc. and Demaree Media for all reasonable expenses incurred in changing their frequency to the new channel.

8. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **March 18, 1993**, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the communities listed below, to read as follows:

Community	Channel No.
Greenfield, Missouri	299A
Huntsville, Arkansas	258A
Seligman, Missouri	227C1

9. IT IS FURTHER ORDERED, pursuant to the authority contained in Section 316 of the Communications Act of 1934, as amended, that the license of Station KESE, Seligman, Missouri, IS MODIFIED to specify operation on Channel 227C1, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the licensee shall file with the Commission a minor change application for construction permit (Form 301), specifying the new facility.

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620.

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's Rules.

10. IT IS FURTHER ORDERED, That pursuant to the authority contained in Section 316(a) of the Communications Act of 1934, as amended, that the license of Station KXBR, Greenfield, Missouri, and the license of Station KFAY-FM, Huntsville, Arkansas, ARE MODIFIED, to specify operation on Channel 299A and Channel 258A respectively, subject to the following conditions:

(a) Nothing contained herein shall be construed as authorizing any change in Licenses BLH-910903KB (Huntsville Arkansas) and BLH-6184 (Greenfield, Missouri) except for the channel as specified above. Any changes, except those specified require prior authorization pursuant to an application for construction permit (FCC Form 301).

(b) Program tests may be conducted in accordance with the provisions of Section 73.1620 of the Rules, PROVIDED the transmission facilities comply in all respects with Licenses BLH-910903KB (Huntsville, Arkansas) and BLH-6184 (Greenfield, Missouri), except for the channel as specified above, and a license application (Form 302) is filed within 10 days of commencement of program tests.

11. IT IS FURTHER ORDERED, That the Secretary of the Commission shall send by Certified Mail, Return Receipt Requested, a copy of this *Order* to the following:

Henden-McChristian
Communications
Station KXBR
Rt. 5, Hwy 72 East
Gravette, Arkansas 72736

KXBR, Inc.
19 East 200 South
Salt Lake City, Utah 84111

Demaree Media, Inc.
Station KFAY-FM
P.O. Box 878
Fayetteville, Arkansas 72712

William J. Pennington, III
Post Office Box 4203
Wilmington, North Carolina
28406
(Counsel for KYOO Broad-
casting)

12. Pursuant to Commission Rule Section 1.1104(1)(k) and (2)(k), any party seeking a change of community of license of an FM or television allotment or an upgrade of an existing FM allotment, if the request is granted, must submit a rule making fee when filing its application to implement the change in community of license and/or upgrade. As a result of this proceeding, KJEM FM, A Limited Partnership, licensee of Station KESE, is required to submit a rule making fee in addition to the fee required for the applications to effect the upgrade.

13. IT IS FURTHER ORDERED, That the Request for Dismissal of Counterproposal filed by KYOO Broadcasting IS GRANTED.

14. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

15. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Michael C. Ruger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau